

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re

FTX TRADING LTD., *et al.*,¹

Debtors.

Chapter 11

Case No. 22-11068 (JTD)

(Jointly Administered)

Re: Docket No. 213

**DECLARATION OF BRIAN C. SIMMS KC
IN SUPPORT OF MOTION OF THE JOINT PROVISIONAL LIQUIDATORS
OF FTX DIGITAL MARKETS LTD. TO DISMISS
THE CHAPTER 11 CASE OF FTX PROPERTY HOLDINGS LTD.**

I, Brian C. Simms KC, declare pursuant to 28 U.S.C. § 1746 as follows:

1. I am a Senior Partner of the firm Lennox Paton and the head of the Litigation and Insolvency & Restructuring Groups.

2. Kevin G. Cambridge, Peter Greaves, and I are the joint provisional liquidators (“**Joint Provisional Liquidators**”) of FTX Digital Markets Ltd. (“**FTX Digital**” or the “**Company**”) duly appointed by the Supreme Court of The Bahamas. FTX Digital is an International Business Company incorporated in the Commonwealth of The Bahamas and operating as a digital assets business under the Digital Assets and Registered Exchanges Act, 2020 (the “**DARE Act**”) as amended, Statute Laws of The Bahamas.

3. I submit this declaration (the “**Declaration**”) in support of the *Motion of the Joint Provisional Liquidators of FTX Digital Markets Ltd. to Dismiss the Chapter 11 Case of FTX*

¹ The last four digits of FTX Trading Ltd.’s tax identification number are 3288. Due to the large number of debtor entities in these Chapter 11 Cases, a complete list of the debtors (the “**U.S. Debtors**”) and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the U.S. Debtors’ proposed claims and noticing agent at <https://cases.ra.kroll.com/FTX>.

Property Holdings Ltd. (“**FTX Property Holdings**”) under sections 105(a), 109(a), 305(a), and 1112(b) of title 11 of the United States Code.

4. The statements made in this Declaration are based on the knowledge I have obtained in the course of carrying out my duties as Joint Provisional Liquidator and the work of professionals retained by the Joint Provisional Liquidators and working under my supervision.

5. I am over the age of 18 and authorized to submit this Declaration on behalf of the Joint Provisional Liquidators in the above-captioned chapter 11 cases. If called as a witness I would testify truthfully to the matters stated in this Declaration.

6. On November 10, 2022, the Securities Commission of The Bahamas (the “**Bahamas Securities Commission**”) suspended the registration of FTX Digital under section 19 of the DARE Act. On that date, the Bahamas Securities Commission filed a petition (“**The Bahamas Petition**”) in the Supreme Court of The Bahamas seeking the appointment of a provisional liquidator of FTX Digital.

7. On November 10, 2022, the Supreme Court of The Bahamas issued an order directing that FTX Digital be placed into provisional liquidation and appointing me as provisional liquidator. On November 14, 2022, the Bahamian Court entered an order appointing Kevin G. Cambridge and Peter Greaves as additional Joint Provisional Liquidators.

8. FTX Property Holdings is an International Business Company incorporated in The Bahamas. FTX Property Holdings has purchased and held properties on the island of New Providence in The Bahamas as offices for benefit of FTX Digital and dwellings for employees of FTX Digital. FTX Property Holdings conducted no business other than the purchase and ownership of real property.

9. Immediately following our appointment, the Joint Provisional Liquidators began investigating all aspects of FTX Digital's business, including its business dealings with FTX Property Holdings. As part of this investigation, we have identified 35 properties owned by FTX Property Holdings, all located on the island of New Providence in The Bahamas. The physical location of these properties, as well as the purchase price paid for each of these properties is:

	Property Description	Purchase Price (USD)
1	Lot no. 44 in the Albany Subdivision, Nassau, New Providence, Bahamas	\$11,000,000.00
2	Albany Bldg. 10 Condominium Unit 4A, Nassau, New Providence, Bahamas	\$7,497,909.90
3	Albany Bldg. 10 Condominium Unit 3B, Nassau, New Providence, Bahamas	\$6,750,000.00
4	Albany Bldg. 10 Condominium Unit 5A, Nassau, New Providence, Bahamas	\$10,250,000.00
5	Albany Bldg. 7 Condominium Unit 2C, Nassau, New Providence, Bahamas	\$21,350,000.00
6	Albany Bldg. 3 Condominium Unit 1B, Nassau, New Providence, Bahamas	\$3,301,886.80
7	Albany Bldg. 9 Condominium Unit 1D, Nassau, New Providence, Bahamas	\$4,750,000.00
8	Albany Bldg. 1 Condominium Unit 2A, Nassau, New Providence, Bahamas	\$7,000,000.00
9	Albany Bldg. 1 Condominium Unit 3E, Nassau, New Providence, Bahamas	\$6,250,000.00
10	Albany Bldg. 1 Condominium Unit 2C, Nassau, New Providence, Bahamas	\$5,500,000.00
11	Albany Bldg. 8 Condominium Unit 6, Nassau, New Providence, Bahamas	\$30,000,000.00
12	Albany Bldg. 8 Condominium Unit 3B, Nassau, New Providence, Bahamas	\$7,311,320.80

	Providence, Bahamas	
13	Albany Bldg. 8 Condominium Unit 1A, Nassau, New Providence, Bahamas	\$5,500,000.00
14	Albany Bldg. 4 Condominium Unit 3D, Nassau, New Providence, Bahamas	\$7,478,873.20
15	Albany Bldg. 4 Condominium Unit Duplex 2, Nassau, New Providence, Bahamas	\$8,900,000.00
16	Albany Bldg. 4 Condominium Unit 2E, Nassau, New Providence, Bahamas	\$7,850,000.00
17	Blake Road, Nassau, New Providence, Bahamas	\$875,000.00
18	Goldwynn Unit 114, Nassau, New Providence, Bahamas	\$1,404,430.00
19	Goldwynn Unit 228, Nassau, New Providence, Bahamas	\$1,449,885.00
20	Goldwynn Unit 232, Nassau, New Providence, Bahamas	\$563,520.00
21	Goldwynn Unit 235, Nassau, New Providence, Bahamas	\$1,017,575.00
22	Goldwynn Unit 337, Nassau, New Providence, Bahamas	\$881,705.00
23	Goldwynn Unit 434, Nassau, New Providence, Bahamas	\$1,154,430.00
24	Goldwynn Unit 436, Nassau, New Providence, Bahamas	\$881,705.00
25	One Cable Beach Unit 207, Nassau, New Providence, Bahamas	\$1,540,000.00
26	One Cable Beach Unit 309, Nassau, New Providence, Bahamas	\$1,395,000.00
27	One Cable Beach Unit G12, Nassau, New Providence, Bahamas	\$1,295,000.00

28	One Cable Beach Unit 603, Nassau, New Providence, Bahamas	\$975,000.00
29	Old Fort Bay Lots 5A & 5B - Fincastle Island, Nassau, New Providence, Bahamas	\$9,000,000.00
30	Ocean Terrace, Nassau, New Providence, Bahamas	\$17,435,475.00
31	West Bay Street, Nassau, New Providence, Bahamas	\$4,500,000.00
32	Veridian Corporate Center #18, 30, 27, 26, 25, 24, Nassau, New Providence, Bahamas	\$8,550,000.00
33	Veridian Corporate Center #23, Nassau, New Providence, Bahamas	\$2,290,000.00
34	Pineapple House, Nassau, New Providence, Bahamas	\$1,800,000.00
35	Veridian Corporate Center #1-17, 19-22, 28, 29, Nassau, New Providence, Bahamas	\$14,500,000.00

10. Based on the documents in possession of the Joint Provisional Liquidators, these properties appear to be the only assets of FTX Property Holdings.

11. FTX Property Holdings did not have a bank account and did not pay for any of the properties that it owns. It did not pay for the maintenance of these properties. Based on the information available to the Joint Provisional Liquidators, the purchase price for each of these properties was paid to attorneys for the vendors on the closing of the purchases by FTX Digital, as was the ongoing fees and costs for the maintenance of the properties. For 32 of the 35 properties identified above, the Joint Provisional Liquidators' investigation has been able to trace the funds used for each purchase from a FTX Digital bank account. There are only three properties where we could not trace the flow of funds. The purchase price for those three properties totaled approximately US\$11.8 million. Our investigation has identified approximately US\$14.3 million of payments by FTX Digital on behalf of FTX Property

Holdings that we could not trace to a particular property. We believe those payments represent the purchase price and related fees for the purchase of the three remaining properties.

12. The payments by FTX Digital for FTX Property Holdings' properties were accounted for as loans from FTX Digital to FTX Property Holdings. According to the financial records I have reviewed, the total amount recorded as owed by FTX Property Holdings to FTX Digital was, as of October 5, 2022, at least \$256.3 million.

13. FTX Digital is the largest creditor, by far, of FTX Property Holdings.² FTX Property Holdings' only known creditors are FTX Digital and much smaller creditors in The Bahamas.³ We are not aware of FTX Property Holdings having any assets or creditors in the United States.

14. According to FTX Property Holdings' register of directors, FTX Property Holdings has two directors, both elected on July 22, 2021: Samuel Bankman-Fried and Ryan Salame. A true and correct copy of the register of directors is attached as Exhibit A.

15. A true and correct copy of the Articles of Association of FTX Property Holdings Ltd. is attached as Exhibit B. Article 62 provides that "[a] meeting of the Directors for the time being at which a quorum is present shall be competent to exercise all or any of the authorities, powers and discretion's [*sic*] by or under the regulations of the Company for the time being vested in or exercisable by the Directors generally," which includes the power to institute legal proceedings concerning the affairs of the Company under Article 71(6). Article 60 provides that "two (2) directors shall be a quorum." Alternatively, under Article 68, directors may act through

² The Joint Provisional Liquidators preserve any other claims or rights they may have under applicable law, and their description of FTX Digital as a creditor of FTX Property Holdings is without prejudice to those rights.

³ The Joint Provisional Liquidators are aware that another creditor of FTX Property Holdings, Albany Bahamas Ltd., may be owed \$1,163,242.50.

a writing in lieu of a meeting, but a majority of directors must consent.

16. A review of the documents filed by the U.S. Debtors in support of the chapter 11 filing provides no indication that Mr. Salame authorized the chapter 11 petition for FTX Property Holdings.

17. The Joint Provisional Liquidators are not aware of any evidence that Mr. Salame approved, or was even informed of, the FTX Property Holdings' chapter 11 filing. An action of one director is a nullity under Bahamian law when the consent of two directors is required.

18. Bahamian law allows Bahamian courts to recognize foreign insolvency proceedings in The Bahamas under certain circumstances. But one requirement for recognition is that the debtor entity is foreign to The Bahamas. Bahamian law does not allow for recognition for a foreign insolvency proceeding of a Bahamian corporation such as FTX Property Holdings. This principle was affirmed by the Supreme Court of the Commonwealth of The Bahamas in *Northshore Mainland Services Inc. v. Export Import Bank of China*, 2015/COM/Com/00039. A true and correct copy of the court's decision is attached as Exhibit C.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: December 12, 2022

/s/ Brian C. Simms, KC

Brian C. Simms, KC

Joint Provisional Liquidator of FTX Digital Markets
Ltd. (acting as agent without personal liability)